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April 4, 2019

Via E-Mail and U.S. Mail

Edward N. Siskel
City of Chicago Department of Law
121 N. LaSalle, Room 600
Chicago, IL 60602

Re: Demand for Repayment of Investigation Costs to Jussie Smollett

Dear Mr. Siskel:

Our firm represents Jussie Smollett in this matter. Please direct all future communications to our attention.

We are in receipt of your March 28, 2019 letter, sent two days after all criminal charges against Mr. Smollett were dismissed, demanding that Mr. Smollett pay to the City of Chicago \$130,106.15 for “repayment of investigation costs” within seven (7) days; otherwise, you threaten to prosecute Mr. Smollett for making a false statement to the City pursuant to Municipal Code § 1-21-010 or to pursue any other legal remedy available at law. Your letter constitutes part of a course of conduct intended to harass and irreparably injure Mr. Smollett. As explained below, your letter is both factually and legally flawed, and Mr. Smollett will not be intimidated into paying the demanded sum.

As you know, Mr. Smollett vehemently denies making any false statements to the City of Chicago, or to any individuals investigating the January 29, 2019 attack on him.¹ All criminal charges against Mr. Smollett from this incident have been dismissed and his record has been sealed. Thus, your claim that Mr. Smollett filed a false police report and orchestrated his own attack is false and defamatory.

Furthermore, it is apparent that your threats were made maliciously and in bad faith, and without an honest belief that a cause of action against Mr. Smollett exists, even under the lesser preponderance of evidence standard. This is evident from 1) the dismissal of all charges against Mr. Smollett and the sealing of his record; 2) the lack of

¹ The investigation revealed that Mr. Smollett's statements to police--that on January 29, 2019, two men attacked him while yelling racial and homophobic slurs--were, in fact, true.

any investigation between the dismissal of charges on March 26, 2019 and your demand for payment on March 28, 2019; 3) the lack of any independent corroboration of the Osundairo brothers' self-serving statements (made after 47 hours of interrogation, while detained, and only after guidance by their attorneys) that the January 29, 2019 attack on Mr. Smollett was a hoax; and 4) public statements expressly contradicting the theory that the attack was a hoax. As you should know, neither the threats in your letter, nor the defamatory statements they rely upon, are afforded First Amendment protection.

Moreover, your unprecedented attempt to file a civil lawsuit against Mr. Smollett charging him with Municipal Code § 1-21-010 for “repayment of investigation costs” is unconstitutional as applied to Mr. Smollett. The Chicago False Claims Act, §§ 1-21-010 through 1-22-060, was enacted on January 10, 2005 and modeled after the federal FCA. These statutes are routinely used to bring civil lawsuits against corporations for deceptive business practices in order to prevent fraud and protect consumers, *see, e.g., City of Chicago v. Purdue Pharma L.P.*, 211 F. Supp. 3d 1058 (N.D. Ill. 2016); *People ex rel. Madigan v. United Const. of Am., Inc.*, 2012 IL App (1st 2012) 120308, 981 N.E.2d 404, or as *qui tam* whistleblower actions. Our research discloses no cases in which the municipal ordinance has been used to try to get a second bite at the apple once charges against a criminal defendant have been dismissed. Thus, despite your repeated claims that you want to treat Mr. Smollett like any other citizen, the 16-count indictment against him followed by your threats of further prosecution clearly constitute disparate treatment.² Application of § 1-21-010 under the facts of this case is unconstitutional.

Finally, any future prosecution of Mr. Smollett for making allegedly false statements about the January 29, 2019 attack would violate the federal³ and state⁴ ban against double jeopardy. The United States Supreme Court has held that successive prosecutions for the same offense⁵ by a State and by a municipality within that State are

² *See, e.g.,* <https://chicago.suntimes.com/news/woman-23-stabbed-by-robber-in-grant-park/> (23-year old Columbia College student who police say falsely reported a robbery and stabbing in Grant Park has not been criminally charged).

³ The double jeopardy clause of the Fifth Amendment to the United States Constitution provides no person shall “be subject for the same offence to be twice put in jeopardy of life or limb.” U.S. Const., amend. V.

⁴ The Illinois Constitution of 1970 provides “[n]o person shall . . . be twice put in jeopardy for the same offense.” Ill. Const. 1970, art. I., § 10.

⁵ Here, the elements of filing a false report under Illinois Statutes § 26-1(a)(4), as Mr. Smollett had been charged with in the now-dismissed indictment, and making a false statement to the City in violation of Municipal Code § 1-21-010, are virtually the same.

prohibited by the double jeopardy clause. *See Waller v. Florida*, 397 U.S. 387, 392-95 (1970). Moreover, the Illinois Supreme Court has explained that there is nothing “in *Waller* to suggest that a municipal ordinance designed to provide only for a fine was not to be comprehended in the Supreme Court's holding.” *People v. Allison*, 46 Ill. 2d 147, 149, 263 N.E.2d 80, 81 (1970). Here, the State Attorney's Office moved to *nolle pros* the charges against Mr. Smollett who, in turn, agreed to forfeit his \$10,000 bail *to the City of Chicago*. Thus, any subsequent prosecution of Mr. Smollett under the Illinois Municipal Code based on the events of January 29, 2019 would violate Mr. Smollett's rights under the Illinois and federal constitutions.

If, despite the deficiencies above, you file a civil action against Mr. Smollett, please be advised that in addition to raising the appropriate legal defenses, 1) we will demand the prompt production of the entire investigation file in this matter, including the full discovery from the criminal action which was never provided to the defense; 2) we will demand that you promptly produce for deposition Mayor Rahm Emanuel, Police Superintendent Eddie Johnson, Abimbola Osundairo, Olabinjo Osundairo, and attorneys Gloria Schmidt and Jorge Rodriguez; and 3) we will seek to have all records and hearings on this matter be open to the public. In light of their apparent vested interest in this matter, we are confident that Mayor Emanuel and Superintendent Johnson will not object to providing their testimony under oath. Mr. Smollett's preference remains, however, that this matter be closed and that he be allowed to move on with his life.

We are available to discuss this matter further.

Sincerely,



Mark J. Geragos
GERAGOS & GERAGOS

cc: Tina Glandian